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7 Attorney for Plaintiff TURN-KEY-TECH, LLC

8 UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10
11 TURN-KEY-TECH, LLC, a California) Case No. **'16CV2126 AJB KSC**
12 limited liability company,)
13) **COMPLAINT FOR PATENT**
14 Plaintiff,) **INFRINGEMENT; EXHIBITS A-B**
15 v.)
16)
17 CLARBLANC, LLC, a Massachusetts) DEMAND FOR JURY TRIAL
18 Limited Liability Company; and DOES 1)
19 – 100,)
20 Defendants.)
21)
22)
23)
24)
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28)

Plaintiff TURN-KEY-TECH, LLC (“TURNKEY”), for its Complaint against Defendants alleges as follows:

THE PARTIES

1. TURNKEY is a California limited liability company, and owner of all rights to United States Patent No. 6,960,316 (hereinafter the “316 patent”). A true and correct copy of the ‘316 patent is attached hereto as Exhibit A.

2. Defendant CLARBLANC, LLC (“CARBLANC”) is a limited liability company organized under the laws of Massachusetts, and having a principal office

1 located at 365 Boston Post Rd., Suite 332, Sudbury, Massachusetts 01776.

2 3. Defendants DOES 1 – 100 are other persons or entities, presently
3 unidentified, that have also been engaged, directly or indirectly, in the manufacture,
4 import, sale, and/or offer for sale in the United States of the products accused of a
5 substantial likelihood of infringement herein.

6 4. On information and belief, Defendants have acted as agents of one or
7 more of each other during some or all of the times relative to the subject matter of
8 this Complaint.

9 **JURISDICTION AND VENUE**

10 5. This action arises under the patent laws of the United States of America,
11 Title 35, United States Code. Jurisdiction is founded on Title 28, United States Code
12 §§ 1331, 1332(a), and 1338(a).

13 6. On information and belief, venue in this district is proper under 28
14 U.S.C. §§ 1391 and 1400(b) because Defendants have committed acts with a
15 substantial likelihood of patent infringement in this District.

16 7. This Court has personal jurisdiction over Defendants because they have
17 manufactured within, imported into, offered for sale, and/or sold products with a
18 substantial likelihood of infringement in this District.

19 **CLAIM FOR RELIEF**

20 **(Patent Infringement)**

21 8. TURNKEY re-alleges and incorporates herein by reference paragraphs
22 1 through 7, inclusive, as though fully set forth herein.

23 9. The '316 patent, entitled "Injection-Molded Plastic Container or Closure
24 with Turned-Under Rim and Method of Injection-Molding the Same," was issued on
25 November 1, 2005.

26 10. On information and belief, Defendants have, within the past six years,
27 made, imported into, sold or offered for sale within the United States and this
28 District, products for which plastic component parts bear a substantial likelihood of

1 being manufactured through processes which incorporate all elements of at least
2 Claim 1 of the '316 patent (hereinafter "Accused Products").

3 11. The Accused Products include the products specifically identified
4 below, and any other of Defendants' products sold under any name which were
5 manufactured utilizing the same or similar processes, including but not limited to,
6 any other product manufactured using the same or a similar injection mold as any of
7 the following products:

8
9 **Cat's Tongue Heavy Duty Cleaning Towels (30)**

10
11 12. Defendant CLARBLANC has not obtained a license or any other valid
12 authorization for import, sale, or offer for sale in the United States of products
13 manufactured through use of the '316 patented process.

14 13. Defendants have been on constructive notice of the '316 patent at least
15 since its issuance on November 1, 2005.

16 14. Defendant CLARBLANC has been on actual express notice of the '316
17 patented process since at least June 3, 2014.

18 15. On information and belief, Defendants have engaged in design,
19 manufacture, import, selling, and/or offering for sale within the United States,
20 including this District, products that bear a substantial likelihood of being
21 manufactured employing the '316 patented process.

22 16. On information and belief, the Accused Products identified herein and
23 as-yet-unidentified products manufactured through the same or substantially similar
24 processes meet all the structural elements and thus bear a substantial likelihood of
25 having been manufactured through processes incorporating all elements of at least
26 Claim 1 of the '316 patent. Plaintiff's allegation is based upon a thorough physical
27 inspection and analysis of actual specimens of the identified Accused Product, as
28 well as a comparison of the structural elements of the identified Accused Product

1 against the elements of Claim 1 of the '316 patent.

2 17. None of Defendants have obtained a license or any other authorization
3 from Plaintiff for manufacture, import, sale, and/or offer for sale in the United States
4 of products manufactured through use of the '316 patented process.

5 18. The notice to Defendant CLARBLANC dated April 27, 2016 from
6 Plaintiff provided Defendant CLARBLANC with drawings and an associated claim
7 chart demonstrating the substantial likelihood of infringement of the '316 patented
8 process by the manufacture, import, sale and/or offer for sale in this District and the
9 United States of the identified Accused Products and all other of said Defendant's
10 products manufactured with processes which incorporate all elements of at least
11 Claim 1 of the '316 patent. A true and correct copy of that notice to Defendant
12 CLARBLANC is attached hereto as Exhibit B.

13 19. The evidence and discussion provided to Defendant CLARBLANC in
14 that notice demonstrate the substantial likelihood that the Accused Products were
15 manufactured using a process which incorporates each element of at least Claim 1 of
16 the '316 patent, and is incorporated by reference herein.

17 20. Plaintiff has requested that Defendant CLARBLANC, pursuant to 35
18 U.S.C. § 295, provide the factual information necessary to verify the manufacturing
19 process used to make the Accused Products.

20 21. To date, Defendant CLARBLANC has not produced any evidence
21 demonstrating the actual process used to manufacture any of the Accused Products.

22 22. Reasonable efforts have been made by Plaintiff to obtain the process
23 information for the Accused Products, providing Defendants with an opportunity to
24 prove that the Accused Products were not manufactured employing the '316 process.

25 23. On information and belief, based upon the substantial likelihood of
26 infringement as discussed above, Defendants made, used, imported, sold and/or
27 offered for sale within the United States and this District, during the past six years,
28 the Accused Products bearing a substantial likelihood of being manufactured using

1 the '316 patented process, without authority to do so, in violation of 35 U.S.C. § 271,
2 knowingly and in wanton and willful disregard of Plaintiff's '316 patent rights.

3 24. On information and belief, based on the substantial likelihood of
4 infringement as discussed above, Defendants contributed to the likely infringement
5 of the '316 patent and actively induced others to likely infringe the '316 patent by
6 virtue of making, importing, selling, using and/or offering for sale within the United
7 States and this District, in violation of 35 U.S.C. § 271, Accused Products bearing a
8 substantial likelihood of being manufactured using the '316 patent process in wanton
9 and willful disregard of Plaintiff's '316 patent rights.

10 25. Based on the acts of Defendants and the substantial likelihood of
11 infringement as discussed above, the conduct of Defendants makes this an
12 exceptional case within the meaning of 35 U.S.C. § 285.

13 26. Based on the substantial likelihood of infringement as discussed above,
14 Plaintiff has likely suffered damages by reason of Defendants' likely infringing
15 conduct alleged hereinabove, in an amount that constitutes at least a reasonable
16 royalty for all of Defendants' sales of the Accused Products during the past six years,
17 and for future sales during the enforcement period of the '316 patent, according to
18 proof at trial.

19 27. Based upon the substantial likelihood of infringement as discussed
20 above, the reasonable royalty owed to TURNKEY from Defendants should be
21 trebled on account of the willful likely infringement by Defendants, and according to
22 proof at trial.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, TURNKEY prays that judgment be entered as follows:

25 a. That the Accused Products are presumed to infringe the '316 patent
26 pursuant to 35 U.S.C. § 295;

27 b. That Defendants are adjudicated and decreed to have thus infringed the
28 '316 patent;

1 c. That Defendants are adjudicated and decreed to have thus contributed to
2 the infringement of the '316 patent and to have thus induced others to infringe the
3 '316 patent;

4 d. That Defendants are ordered to account for damages adequate to
5 compensate Plaintiff for thus infringing the '316 patent, thus contributorily
6 infringing the '316 patent, and thus inducing infringement of the '316 patent,
7 according to proof at trial, and that such damages are awarded to Plaintiff;

8 e. That such damages as are awarded are trebled by the Court pursuant to
9 35 U.S.C. § 284 by reason of the willful, wanton, and deliberate nature of that
10 infringement;

11 f. That this case is decreed an "exceptional case" and that Plaintiff is
12 awarded reasonable attorneys' fees by the Court pursuant to 35 U.S.C. § 285;

13 g. For interest thereon at the legal rate;

14 h. For costs of suit herein incurred; and

15 i. For such other and further relief as the Court may deem just and proper.

16 **DEMAND FOR JURY TRIAL**

17 TURNKEY respectfully requests that its claims be tried to a jury.

18
19 DATED this Tuesday, August 23, 2016.

20 TURN-KEY-TECH LLC, Plaintiff

21
22 s/ CHRISTIAN FENTON

23 _____
Christian Fenton

24 Attorney for Plaintiff
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